THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.1098, 1254, 1315, 1336 and 1888 of 2006

03.02.2006

Between:

Rusum Seshaiah, S/o.Venkaiah

And others

… Petitioners

AND

The State Election Commission of Andhra Pradesh,

Budda Bhavan, Near Tank Bund, Secunderabad

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.1098, 1254, 1315, 1336 and 1888 of 2006

COMMON ORDER:

This common order shall dispose of all these five writ petitions, which were heard on 27.1.2006 except W.P.No.1888 of 2006, which was heard on 01.2.2006. The submissions made and the point for consideration are the same, and therefore, it is expedient to dispose of the matters by common order.

In exercise of the powers conferred by Article 243K of the Constitution of India (CoI) and the powers conferred under Sections 13(2), 14(2) and 201 of A.P.Panchayat Raj Act, 1994 (the Act, for brevity) read with Rule 4(2) of A.P.Panchayat Raj (Conduct of Elections) Rules, 1994 (the Rules, for brevity), the State Election Commission (SEC) of Andhra Pradesh issued a notification No.239/SEC-B2/2005 dated 18.1.2006 calling upon the registered voters of considerable number of Gram Panchayats in as many as sixteen (16) districts of Andhra Pradesh to elect Members/Sarpanches for casual vacancies in their respective Gram Panchayats. The SEC also notified the election schedule. As per the election schedule, which is uniform to all Gram Panchayats, the last date for filing nominations is 27.1.2006, for withdrawal 31.1.2006, and counting and declaration of results is scheduled on 06.2.2006. Aggrieved by the election notification dated 18.1.2006 and the consequential notification issued by the District Election Authority and Collector of various Districts, the present writ petitions are filed.

In W.P.No.1098 of 2006, the petitioner is a resident of Nekarikallu Gram Panchayat in Guntur District. Ordinary elections for the said Gram Panchayat were held on 20.8.2001 and one Sagam Anji Reddy was elected as Sarpanch. After the death of the elected Sarpanch, on 20.5.2005, the District Collector issued orders on 30.5.2005 authorising the Upa Sarpanch to function as the Sarpanch of the village. In W.P.No.1254 of 2006, the first petitioner is Upa Sarpanch of China Hulti Gram

Panchayat in Kurnool District. The elections for the Office of Sarpanch were held on 28.1.2001 and the elected Sarpanch resigned from the Office as he got selected to a Government job. The District Collector, Kurnool issued proceedings on 21.1.2005 directing the first petitioner to discharge the functions of Sarpanch as per Section 26(1) of the Act. The second petitioner was elected as Member and Upa Sarpanch of Chippagiri Gram Panchayat in Kurnool District on 21.8.2001. After the death of the Sarpanch on 04.3.2005, the District Collector, Kurnool issued proceedings authorising the second petitioner to act as Sarpanch. In W.P.No.1315 of 2006, the petitioner was elected as Member and her son was a Sarpanch, who died in a motor vehicle accident on 04.3.2005 and by reason of the proceedings issued by the District Collector, she is acting as Sarpanch. In W.P.Nos.1336 and 1888 of 2006, which relate to different villages in different Districts, the petitioners were Upa Sarpanches but on the death of elected Sarpanches, they were made Incharge Sarpanches.

It is the case of the petitioners that the ordinary elections were held to the Gram Panchayats on 20.8.2001 or 21.8.2001 and in one case on 27.8.2001. Though the Law permits the conduct of elections to fill up casual vacancies resulting either on the death/resignation of the elected person, a casual vacancy in the Office of the Sarpanch shall not be filled up if the ordinary elections for the Sarpanch are going to be held within six months from the date of the casual vacancy. It is also the case of the petitioners that in all the cases, the Sarpanch either died or resigned about one or two years ago and the respondents were bound to conduct election to fill up such casual vacancy within 120 days from the date of occurrence of such vacancy. But having not done, when the ordinary elections are scheduled to be held on 19.8.2006, the SEC cannot notify the elections. According to the learned Counsel for the petitioners, six months time, before ordinary elections are scheduled, would expire just 13 to 15 days before the scheduled date of polling in August 2006, and therefore, notifying of the elections for casual vacancies is illegal and arbitrary. The petitioners place strong reliance on subsections (4) and (5) of Section 14 of the Act.

The learned Counsel for the petitioners, Ms.P.Veera Reddy, Posani Venkateswarlu, G.Jagadeeswara Rao and K.Anji Reddy, made strenuous and vehement submissions on the lines as noticed herein above. **Opposing** the writ petitions, the learned Assistant Government Pleader for Panchayat Raj, Sri Seshagiri Rao, for the Government and Sri K.G.K. Prasad, learned Standing Counsel for SEC submit that even if there is a gap of one day before the scheduled date of ordinary elections in August 2006 and the date on which, six months period would expire, the elections shall have to be held as contemplated under Article 243E of the CoI. They would urge that subsections (4) and (5) of Section 14 of the Act are not contravened by the SEC. They would also urge that when once the election notification is issued, a writ petition is not maintainable. Reliance is placed on the decision of the Full Bench of this Court in **Kalla Rama Krishna v State Election Commission, Hyderabad**.

When CoI was adopted by independent Indian Republic, Village Panchayats System under District Boards Act was the mode and method of decentralisation of power in a rudimentary manner. The system, however, was not autonomous or

independent and was subjected to thumb pressure by the Government of the day. It was the awed object of makers of the CoI to organise Village Panchayats, and confer on them all powers to ensure efficient functioning of self-government. This desire of the CoI makers found its manifestation by way of Article 40 of CoI. In all quarters, it was accepted that despite Article 40, the country failed to organise village panchayats as efficient units of self-government. It is therefore in 1992, by the Constitution (73rd Amendment) Act, 1992, a separate part (Part IX) was devoted to panchayats (Articles 243 to Article 243-O) with a fond hope that there would be lesser legislative and executive control of the functioning of panchayats at Village, Intermediate and/or District level. The legislature and executive cannot now play the role of meddlesome interlopers in the functioning of the Gram Panchayats.

The method and manner of constituting Gram Panchayats, the delimitation and reservation of Wards, Elections and durationof the Gram Panchayats and all perceivable matters are now taken care of by the CoI. Indeed, Article 243-O mandates that that every State legislature shall make a law in tune with Part IX of the CoI. Accordingly, we have A.P. Panchayat Raj Act, 1994. Be that as it is, any provision of the Act has to be interpreted keeping in view the provisions of Part IX as guiding interpreted principles. Indeed, if any provision of the Act is found to be inconsistent with the provisions of the CoI, the Court must lean towards the constitutional provision because any interpretation of any statute must be in tune with any provision of the CoI. Therefore, the question that falls for consideration is whether Section 14 (5) of the Act prohibits SEC/ District Collector to notify the elections for casual vacancies when the ordinary elections are due a couple of weeks before the expiry of the six months period.

Article 243B mandates that every State shall constitute Panchayats at the village, intermediate and district levels in accordance with Part IX of CoI. Under Article 243C of CoI, the Legislature of the State is empowered to make provisions with respect to composition of Panchayats, but the ratio between the population of the territorial area of a Panchayat and the number of seats in such Panchayat to be filled by election shall be, as far as practicable, the same through out the State. All the seats in a Panchayat shall be filled up by persons chosen by direct election from territorial constituencies in the Panchayat area and for that purpose each Panchayat shall be divided into territorial constituencies. Therefore, when the CoI contemplates the constitution of Panchayats and provides for direct election, it has to be inferred that the Panchayat is synonymously used with the collectivity of the persons elected to the seats in the Gram Panchayat. The term of the Gram Panchayat, so to say, the elected persons is stipulated in Article 243E of CoI, which reads as under.

> **243E. Duration of Panchayats, etc**.- (1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.
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> (2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed –

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

Clause (1) of Article 243(1) of CoI is to the effect that every Panchayat shall continue for five years from the date appointed for its first meeting and no longer. This is, however, not applicable when a Panchayat dissolved under any law for the time being in force. Under Clause (3) of Article 243E of CoI, an election to the Panchayat shall be completed before the expiry of its duration of five years. In the event of dissolution of the Gram Panchayat, an election has to be held to constitute a new Panchayat before the expiration of period of six months from the date of the dissolution. However, if the remainder of the period for which the dissolved Gram Panchayat would have continued is less than six months, it shall not be necessary to hold election in the event of dissolution of Gram Panchayat. That is to say, in a case of dissolution of Gram Panchayat, which is elected for a period of five years from its first meeting, the authority is required to hold election within six months from the date of dissolution, but if the period of five years is likely to expire in less than six months, no election is required to be held for a dissolved Gram Panchayat. Clause (4) of Article 243E of CoI is by way of a clarification and is to the effect that when an election is held for a dissolved Gram Panchayat, such Panchayat constituted upon dissolution shall continue only for the remainder of the period of five years.

From this analysis of the Article 243E of CoI, it can be concluded that when once elected, a Panchayat shall continue for five years from the date of its first meeting and no longer. In the event of dissolution of a Gram Panchayat within six months from the date of resolution, election has to be conducted and such Panchayat constituted upon dissolution shall continue for remaining period. But if the remainder period is less than six months, it shall not be necessary to hold election. If the remainder period after dissolution is more than six months even by a day, Article 243(1) of CoI cannot be violated merely because the remainder period is very short. However short, the remainder period may be, election shall have to be conducted and Gram Panchayat shall have to be constituted for a period of five years from the date of first meeting. This principle cannot be lost sight of while interpreting Section 14(4) and (5) of the Act. In this context, it is necessary to read subsections (3), (4) and (5) of Section 14 of the Act as under.

14. Election and term of office Sarpanch:- (3) Save as otherwise expressly provided in, or prescribed under this Act, the term of office of the Sarpanch who is elected at an ordinary election shall be five years from the date appointed by the election authority for the first meeting of the gram panchayat after the ordinary election.

(4) Subject to the provisions of sub-section(5), any casual vacancy in the office of the Sarpanch shall be filled within one hundred and twenty days from the date of occurrence of such vacancy, by a fresh election under sub-section (1); and a person elected as Sarpanch in any such vacancy shall hold office only so long as the person in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

(5) Unless the Commissioner otherwise directs, no casual vacancy in the office of the Sarpanch shall be filled within six months before the date on which the ordinary election of the Sarpanch under sub-section (1) is due.

Be it noted that the Sarpanch of every Gram Panchayat shall be elected by direct election by the persons, whose names appear in the electoral rolls of Gram Panchayat and the election of Sarpanch may be held at the same time and place, as the ordinary elections of the Members of the Gram Panchayat. The term of the office of the Sarpanch, who is elected in an ordinary election, shall be five years from the date appointed by the election authority for the first meeting after the ordinary election. In case, any casual vacancy in the office of the Sarpanch occurs within 120 days from the date of the occurrence of the vacancy, a fresh election for electing Sarpanch will have to be held and person so elected shall hold office only so long as the person in whose place he is elected would have been entitled to hold office if the vacancy had not occurred. This position can be seen by a reading of subsections (1) to (4) of Section 14 of the Act. Subsection (5) of Section 14 of the Act is by way of an exception and is to the effect that if the ordinary election of the Sarpanch under subsection (1) of Section 14 of the Act is due within six months, no election need be held. However, in a given case, a Commissioner can direct election to a casual vacancy even if the remaining period is less than six months. Here again, reading sub-sections (3) and (5) of Section 14 of the Act together would show that if the remaining period is more than six months even by a day or a week, necessarily election has to be held and discretion is given to the Commissioner to hold election to fill up a casual vacancy of the Sarpanch even if the remaining period is within six months. Such interpretation would be in accordance with Article 243E of CoI. If the provision is interpreted in the way suggested by the learned counsel for the petitioners, the same would be repugnant to Article 243E of CoI.

In all these cases, SEC issued notification on 18.1.2006 and pursuant thereto elections are scheduled on 06.2.2006. From that day till the elections are held in August 2006, which can only be after 19th or 20th of August 2006, the period will be more than six months, and therefore, the provision of Section 14(6) read with Section 14(3) of the Act is strictly complied with and there is no violation thereof. It is no doubt true as contemplated under sub-section (4) of Section 14 of the Act, the competent authority ought to have conducted election to fill up the casual vacancy

within 120 days from the date of occurrence. The petitioners at no point of time made out any grievance on this score, presumably because they were holding office of the Sarpanch as an interim arrangement and conduct of elections immediately after the occurrence of vacancy would have been detrimental to them.

The learned counsel for the petitioners submit that when the elections are due in August 2006 conduct of elections now would result in the voters voting twice within a span of six months and it is also likely to result in law and order problem. This Court is afraid. The submission is only noted for the purpose of rejection. There is no merit in such submission. The petitioners are authorised to act as Sarpanches in accordance with the provisions of the Statute and when the elections are being conducted in accordance with the provisions of the Act and the Constitutional provisions, they cannot be heard to raise all these grounds.

In all the cases, pursuant to the notification issued by the SEC, the District Election Authority has issued election notification. In such an event, a Writ Petition is not maintainable. A Full Bench of this Court in **Kalla Rama Krishna** (supra) reiterated this principle while approving the earlier decisions of this Court in **K. Ramulu v Collector and District Election Authority, Ch. Ramachandra Rao v State of Andhra Pradesh** and **V.Narayana v Election Officer, Alwal Municipality**. The relevant observations made by the Full Bench in **Kalla Ramakrishna** (supra) are as under.

> We are, therefore, of the considered view that the Supreme Court right from *Ponnuswamy's case* has consistently laid down the law that election covers the entire process i.e., from the issue of the notification under the relevant legislation to the declaration of the result. Having regard to the important functions which the legislatures have to perform in democratic countries, it had always been recognised to be a matter of first importance that elections should be concluded as early as possible according to the time schedule and all controversial matters and all disputes arising out of elections should be postponed till the elections are over. The person interested in questioning the elections has to wait till the election is over and institute a petition in accordance with the law calling in question the election of the successful candidate. Any matter, which has to the effect of vitiating an election, should be brought up only at appropriate stage in an appropriate manner before a special Tribunal constituted for the purpose and should not be brought up at an intermediate stage before any Court. In other words, in election matters, only one remedy is available, that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. High Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution to entertain petitions regarding improper rejection of nomination papers.

For the above reasons, the Writ Petitions are devoid of any merit and are accordingly dismissed. There shall be no order as to costs.

(**V.V.S.RAO, J**)

03.02.2006.

NOTE:

L.R.Copy be marked.

(By order)

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